

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GARRETT ENTERPRISES, a Utah
partnership, KENNETH R. GARRETT,
DOROTHY G. GARRETT, individually
and in their capacities as trustees of the
GARRETT FAMILY TRUST, and KELLY
J. GARRETT,
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

Case No. 2:03-CV-438 TS

This matter is before the court for consideration of Plaintiff's Motion for Summary Judgment. Plaintiff, the United States, brought the Complaint seeking to recover a deficiency on a promissory note guaranteed by Defendants.

The government seeks summary judgment. Defendants have not responded to the Motion. Summary judgment is appropriate only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.

R. Civ. P. 56(c). In reviewing the motion, the court views "the evidence in the light most favorable to the nonmovant." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

If the nonmoving party fails to respond, the district court may not grant the motion without first examining the moving party's submission to determine if it has met its initial burden of demonstrating that no material issues of fact remain for trial and the moving party is entitled to judgment as a matter of law. If it has not, summary judgment is not appropriate, for "[n]o defense to an insufficient showing is required."

Reed v. Bennett, 312 F.3d 1190, 1194-95 (10th Cir. 2002) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160-61 (1970)).


The court has examined the government's submission to determine if it has met its burden of demonstrating that there are no material issues of fact. The government has produced evidence showing that the Defendants are obligors on a note, the note is unpaid, demand for payment has been made, and the amount that remains due and owing. The court finds that these facts are undisputed and state a *prima facie* case for recovery under the note. Thus, the government has met its initial burden of demonstrating that no material issues of fact remain for trial and the moving party is entitled to judgment as a matter of law. It is therefore

ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED. It is further

ORDERED that Plaintiff is entitled to judgment in the principal amount of \$944,527.74, plus accrued prejudgment interest in the amount of \$259,750.42, for a total outstanding balance of \$1,204,278.16, plus interest thereafter according to law.

DATED July 21, 2005.

BY THE COURT:



TED STEWART
United States District Judge